HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO. 5763 OF 2007

DATE: 16.04.2007

BETWEEN

1. M/s Perfect Services ,. Rep. By its Proprietor Sri B. C. Naidu

....Petitioner

AND

1. The Government of Andhra Pradesh rep by its Principal Secretary to Government (R&E) Finance (SMPS) Department , Secretariat, Hyderabad and two others

.... Respondents

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HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO. 5763 OF 2007

ORAL ORDER:

The petitioner is a registered labour contractor. He has been supplying employees of various categories on outsourcing basis to various departments. At present he holds a contract for supply of Sweepers and Scavengers to the BRKR Bhavan.

The Executive Engineer R&B, East Building Division, the third respondent herein, issued tender notice dated 2.3.2007 inviting tenders for maintenance and cleaning of the said building estimating at Rs. 3,84,600/-. The work involved engagement of different categories of workers. The petitioner states that the estimating process in the tender notice does not represent the wages payable to the employees to be engaged. He placed reliance upon G.O.Rt No. 2501 Finance (SMPS) Department, dated 13.7.2006, whereunder the remunerations payable to different categories of employees to be engaged on outsourcing basis were indicated. Petitioner contends that the respondents are not following the orders in G.O.Rt.No. 2501 and their action amounts to discrimination particularly, as regards the amounts payable to the workers engaged as Sweepers and Scavengers.

On behalf of the respondents a counter affidavit is filed, furnishing the procedure followed by them in arriving at the amounts stipulated in the tender notice and the method adopted by them. It is stated that the posts of Sweepers and Scavengers are not covered by G.O.Rt.No. 2501 dated 13.7.2006 and therefore, the petitioner cannot complain about the violation of the same.

Heard the learned counsel appearing for the petitioner and the learned Government Pleader for R & B.

The petitioner assailed the very tender notice dated 2.3.2007 alleging that it is contrary to G.O.Rt.No. 2501 dated 13.7.2006, approached this court. In the recent past, the Government has chosen to get the works of different categories executed, and carried on through the process of outsourcing. In the matter of inviting bids and awarding contracts, uncertainty prevailed, as regards the payment of salaries. To ensure objectivity in the matter, Government issued G.O.Rt.No. 2501 dated 13.7.2006, prescribing the wages payable to different kinds of employees to be engaged on outsourcing basis. The introductory paragraphs 1, 2 , and 3 of the G.O are as under:

> "Government are outsourcing of certain services like computer Works, Driving, Typing, Sweeping and Scavenging to the private agencies and the remuneration to those services is being paid to the Agencies.
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> Hitherto, the remuneration for the outsourcing of services is being paid the basic pay of the post to which the persons are being taken on outsourcing basis through an Agency as per the pay scales 1999 and for the Data Processing Officers and Data Entry Operators @ Rs. 4,500/- and Rs. 4,000/- respectively.
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> In this connection many proposals are coming from the departments/ agencies again and again for enhancement of remunerations stating that the cost of living has been steeply increased and hence requested to enhance the remuneration as per the RPS-2005".

It is in this context, that the Government prescribed the wages at enhanced rates. For the posts of Attenders/Class IV, the enhanced remuneration is stipulated at Rs. 3,900/- per month. The G.O is made applicable to all departments wherever persons are engaged on outsourcing basis.

The petitioner contends that the posts of Sweepers and Scavengers come under Class IV and their wages ought to have been worked at Rs. 3,900/- per month, as provided for in the G.O. The respondents dispute the same.

From the G.O, it is evident that it proposed to cover various posts including those of Sweepers and Scavengers. The fact that the said posts are not separately mentioned in the table, adds strength to the contention of the petitioner. If the contention of the learned Government Pleader that the said category of posts come under the last grade service, the scale of pay attached to that post ought to have been taken into account.

The attempt of respondents to allow the wages prescribed by the labour department for unskilled workers would amount to discrimination. While allowing the minimum scales of pay to the posts of different categories, the respondents cannot discriminate as regards the posts of Sweepers and Scavengers. In fact, protection, if at all, is to be extended to the said posts.

While granting time to the learned Government Pleader to obtain instructions at the stage of admission, this Court directed stay of finalization of the award of contract. However, in view of the discussion undertaken above, the tender itself needs to be re-issued duly allowing the minimum of pay scales for the posts of Sweepers and Scavengers by treating them either as employees of the Class IV category, or of Last Grade Service.

The Writ Petition is allowed. The tender notice dated 2.3.2007 is set aside and the third respondent shall issue tender notice afresh, duly incorporating the minimum scales of pay for the posts of Sweepers and Scavengers that are prevailing in the Government Service. It shall also be open to him to continue the

present arrangement till such exercise is under taken.

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L. NARASIMHA
REDDY, J

Date: 16.04.2007
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